Convention on the Rights of the Child

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Committee on the Rights of the Child

Concluding observations on the report submitted by Malawi under article 8 (1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*

1. The Committee considered the report of Malawi (CRC/C/OPAC/MWI/1) at its 2185th and 2186th meetings (see CRC/C/SR.2185 and 2186), held on 30 and 31 January 2017, and adopted the present concluding observations at its 2193rd meeting (see CRC/C/SR.2193), held on 3 February 2017.

I. Introduction

2. The Committee welcomes the submission of the State party's report and takes note of the written replies to the list of issues (CRC/C/OPAC/MWI/Q/1/Add.1), received on the day of the dialogue. The Committee expresses its appreciation for the constructive dialogue held with the high-level and multisectoral delegation of the State party.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with the concluding observations on the combined third to fifth periodic reports submitted by the State party under the Convention (CRC/C/MWI/CO/3-5), and on the report of the State party submitted under the Optional Protocol on the sale of children, child prostitution and child pornography (CRC/C/OPSC/MWI/CO/1), both adopted on 3 February 2017.

II. General observations

Positive aspects

4. The Committee welcomes the various positive measures taken in areas relevant to the implementation of the Optional Protocol, in particular:

(a) The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, in March 2005;

* Adopted by the Committee at its seventy-fourth session (16 January-3 February 2017).

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(b) The provisions of the 2004 Defence Force Act prohibiting the possibility of persons under 18 years of age to serve in armed forces;

(c) The Rome Statute of the International Criminal Court, in September 2002.

5. The Committee welcomes the declaration by the State party upon ratification of the Optional Protocol that the minimum age for voluntary recruitment into the armed forces is 18 years.

III. General measures of implementation

Coordination

6. The Committee is concerned that the Ministry of Gender, Children, Disability and Social Welfare does not have adequate human, financial and technical resources for the effective implementation of the Optional Protocol.

7. **The Committee recommends that the State party ensure that the Ministry of Gender, Children, Disability and Social Welfare, which is responsible for the coordination of activities related to the implementation of the Optional Protocol, is provided with the appropriate capacity and capability to coordinate the implementation and evaluation of activities under the Optional Protocol, and with all necessary human, technical and financial resources to carry out its mandate at all levels.**

Allocation of resources

8. The Committee is concerned about the lack of specific budget allocations for the implementation of the Optional Protocol.

9. **The Committee recommends that the State party ensure that sufficient and targeted resources are allocated for the effective implementation of all areas of the Optional Protocol.**

Dissemination and awareness-raising

10. The Committee welcomes the capacity-building and awareness-raising activities on the Optional Protocol. It is however concerned that the Optional Protocol is not widely known and that not all members of the relevant professional categories receive adequate training on the Optional Protocol.

11. **The Committee recommends that the State party continue its efforts to disseminate widely the principles and provisions of the Optional Protocol and strengthen capacity-building among all relevant professional groups and the general public, targeting children in particular. It also recommends that the State party establish robust mechanisms for monitoring compliance with the provisions of the Protocol.**

Data

12. The Committee notes the inadequate mechanism for data collection, analysis and monitoring for all areas covered by the Optional Protocol.

13 **The Committee recommends that the State party extend its newly created integrated information management system to all areas relevant to the implementation of the Optional Protocol.**

IV. Prevention

Age verification procedures

14. The Committee notes that, under the Defence Force Act, children under 18 years of age are not eligible to join the army. However, it is concerned that, in practice, age verification of army recruits is not reliable owing to the current lack of an effective and universal birth registration system. This could result in the recruitment by armed forces of children under 18 years of age owing to the discretion of the recruiting officer, missing birth certificates or the falsification of birth certificates.

15. **The Committee urges the State party to ensure the compulsory, consistent and systematic verification of the age of individual recruits by recruitment officers to effectively prevent the recruitment of children into the armed forces. The Committee further reaffirms its concluding observations under the Convention (see CRC/C/MWI/CO/3-5, para. 18) and recommends that the State party expedite birth registration processes to ensure the easy identification and protection of children at all times.**

Human rights and peace education

16. The Committee regrets the lack of information on whether conscripts and soldiers on active duty are provided with regular and mandatory education on the provisions of the Optional Protocol.

17. **The Committee recommends that the State party take the measures necessary to include education on the provisions of the Optional Protocol in the compulsory curriculum for conscripts and persons in active military service.**

V. Prohibition and related matters

Criminal legislation and regulations in force

18. The Committee is concerned that there is no explicit provision criminalizing the recruitment of children by armed forces or non-State armed groups that are distinct from the armed forces of the State.

19. **The Committee recommends that the State party include an explicit provision in the Penal Code to criminalize the recruitment of children into armed forces or non-State armed groups that are distinct from the armed forces of the State.**

Control of arms

20. The Committee notes that the Malawi Law Commission has made recommendations for a new Firearms Act. It is however concerned that the current Firearms Act of 1967 does not expressly prohibit the acquisition and use of firearms by children. It is also concerned at the reportedly extensive home-based small arms industry and the proliferation of firearms.

21. **The Committee recommends that the State party adopt as a matter of urgency the new Firearms Act, expressly prohibit the acquisition, possession and use of firearms by children, confiscate illegal firearms that are in circulation and regulate the use of home-made firearms.**

Extraterritorial jurisdiction and extradition

22. The Committee regrets the lack of legislation on extraterritorial jurisdiction and extradition over all offences covered by the Optional Protocol.

23. **The Committee recommends that the State party take all measures necessary to ensure that its national legislation enables it to establish and exercise extraterritorial jurisdiction and to include in its extradition treaties the offences under the Optional Protocol.**

VI. Protection, recovery and reintegration

Measures adopted to protect the rights of child victims

24. The Committee is concerned at the lack of effective mechanisms to identify, at an early stage, refugee, asylum-seeking and migrant children, including unaccompanied children, who enter the State party and may have been recruited or used in hostilities abroad.

25. **The Committee recommends that the State party:**

(a) **Put in place mechanisms to identify, at an early stage, refugee, asylum-seeking or migrant children, including unaccompanied children, coming from countries with past or current armed conflicts and who may have been involved in hostilities;**

(b) **Ensure that the personnel responsible for such identification are trained in children's rights, child protection and interviewing skills;**

(c) **Develop protocols and specialized services to ensure that such children are provided with appropriate assistance for their physical and psychological recovery and social reintegration.**

VII. International assistance and cooperation

International cooperation

26. **The Committee recommends that the State party continue and strengthen its cooperation with the International Committee of the Red Cross and with the Special Representative of the Secretary-General for Children and Armed Conflict, and that it explore increased cooperation with the United Nations Children's Fund and other United Nations entities in the implementation of the Optional Protocol.**

VIII. Ratification of the Optional Protocol on a communications procedure

27. **The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the Optional Protocol on a communications procedure.**

IX. Follow-up and dissemination

28. **The Committee recommends that the State party take all measures appropriate to ensure that the recommendations contained in the present concluding observations are fully implemented, by, inter alia, transmitting them to the Parliament, the relevant ministries, including the Ministry of Defence, the Supreme Court and local authorities, for appropriate consideration and further action.**

29. **The Committee also recommends that the State party make the report, the written replies to the list of issues and the present concluding observations widely available, including but not exclusively through the Internet, to the public at large, civil society organizations, youth groups, professional groups and children, in order to generate debate on and awareness of the Optional Protocol and its implementation and monitoring.**

X. Next report

30. **In accordance with article 8 (2) of the Optional Protocol, the Committee requests the State party to include further information on the implementation of the Optional Protocol and the present concluding observations in its next periodic report under the Convention on the Rights of the Child, to be submitted in accordance with article 44 of the Convention.**